



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/142806

PRELIMINARY RECITALS

Pursuant to a petition filed August 02, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly processed a reported change made by Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Two of Petitioner's children were out of Petitioner's home and care until mid-July 2012. On July 16, 2012 Petitioner filed an online Access application/review form to report that those two children had returned, or were about to return to her home, and asked that her FoodShare allotment be increased. This followed a court order on that date directing return of the two children.
3. On August 2, 2012 the agency sent Petitioner a written request for verification seeking proof that the children had indeed returned her home. The agency gave Petitioner until August 13 to provide that documentation.

4. The social service agency dealing with Petitioner sent the agency by fax a letter on August 10, 2012 that informed the agency children had returned to the home of Petitioner in July 20, 2012.
5. The two children involved here, i. e., the two children returning to the home of Petitioner were included in the food share household of their father in July and August 2012.
6. The agency did increase Petitioner's FoodShare allotment beginning with the month of September 2012.

DISCUSSION

The general policy statement respect to adding persons to a food share case follows:

6.1.3.3 Changes That Cause an Increase in Benefits, Including Person Adds

7 [CFR](#) 273.12(c)(1)

All reported changes that cause an increase in the FS benefit including person additions, increases in expenses, etc., will be effective the first of the month following the report month if required verifications are received within 10 days of the request for verification.

If verifications are not received within 10 days, and the FS case is not closed for at least one day, make the change effective the first of the month following the month verifications are received.

Issue the appropriate supplement by the 10th day of the month the increase in benefits is effective.

Note: A person cannot be a member of more than one (1) food unit and one (1) FS group in the same month except residents of shelters for battered women and children ([3.4.1](#)).

Prior to adding a person from one FS case to another, remove the person from the previous FS case.

FoodShare Wisconsin Eligibility Handbook, §6.1.3.3.

Additionally, the agency is to act on a reported change within 10 days if not earlier. *FSH, §6.1.3.1.*

Here there was no action by the agency in response to Petitioner's reported change until 17 days after the report. At that point a written request for verification was issued. There is some question as to when the response was received by the agency. The agency date stamp on the letter submitted by social service agency is August 15, 2012 but the fax cover sheet from that agency indicates that it was sent at noon on August 10, 2012.

It is apparent that the children were returned to the home of Petitioner on July 20, 2012. That was reported to the agency just prior to the return. The agency did not request any verification until August 2. That verification request gave Petitioner until August 13 to provide the requested information. That information was supplied and there is credible evidence to indicate that was sent to the agency on August 10, 2012.

Given all these circumstances I am concluding that the agency should have processed a change report more quickly and had they done so would have included the children in the food share household of Petitioner effective August 1, 2012. That it did not get done does not mean that it should not be done; agency will have to take the steps necessary to add the children to Petitioner case effective August 1, 2012, to issue a supplemental FoodShare to Petitioner's household for August 2012 and the steps necessary to recover the overpayment made to the father's household for August, 2012 .

CONCLUSIONS OF LAW

That the children were returned to Petitioner's household on July 20, 2012 and should have been added to Petitioner's Food Share case effective August 1, 2012.

THEREFORE, it is

ORDERED

That this matter is sent back to the agency with instructions to take the steps necessary to remove the two children at issue from the FoodShare case of the father for August 2012 and add them to the FoodShare case of Petitioner and adjust FoodShare benefits accordingly. This must be done within 10 days of the date of this Order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

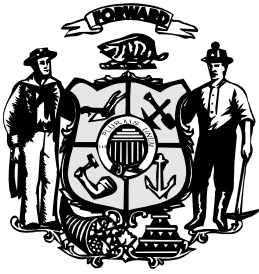
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 27, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability